

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 655 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DURGABEN JETHABHAI PANCHASARA

Versus

VIJAYBHAI RASIKBHAI GAJJAR

Appearance:

MR RN SHAH for Petitioners

MR UI VYAS for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 05/08/98

ORAL JUDGEMENT

#. Heard learned advocates.

#. This appeal arises from impugned order dated 17th November,1995 rendered by the learned judge of the City Civil Court No.11 of Ahmedabad below Notice of motion Ex.5 and an injunction application Ex.6 in Civil Suit No.2813/94.

#. The learned trial judge has come to the conclusion that the question whether such a suit for

permanent injunction simpliciter is maintainable or not, will have to be decided at the time of trial. He has further come to the conclusion that if the interim injunction is not granted, the plaintiff would suffer such hardship as cannot be compensated in terms of money. The suit for permanent injunction as also the interim injunction application arose from the apprehension that the defendants might transfer the property in question inspite of the fact that there was a subsisting agreement to sell the same in favour of the plaintiffs who had paid total consideration of Rs.1,36,000/-.

#. During the pendency of this appeal from Order, there is further development into the matter. The plaintiff did file Civil Suit No.4094/96 in City Civil Court, Ahmedabad for specific performance of the aforesaid agreement to sell the property in question. In that view of the matter, it has been submitted on behalf of the respondent (original plaintiff) that the basis on which the defendants have challenged the impugned order, does not survive. Bearing in mind the facts of the case and the later development into the matter, it will be just and proper to pass the following order.

The interim injunction which has been granted by the trial court in favour of the plaintiffs (original respondents herein) shall continue till the interim injunction application filed or to be filed by the plaintiffs in Civil Suit No.4094/96 is decided by the trial court. In case, if the plaintiffs have not filed such interim injunction application before the trial court in Civil Suit No.4094/96, the same shall be filed within a period of 15 days from today. If the plaintiffs (respondents herein) fail to file such an application in Civil Suit No. 4094/96, the interim injunction which has been granted by the trial court and which has been the subject matter of the present appeal from order, will stand vacated.

As and when the interim injunction application is filed before the trial court in C.S.4094/96, such application along with the Notice of Motion in support thereof shall be decided by the trial court as expeditiously as possible without being influenced by the order impugned in this appeal. The trial court will give opportunity to both the parties of being heard on such injunction application.

#. This Appeal from Order will stand disposed of in the above terms.

#. The C.A. No.7112/95 filed with this AO, will also stand disposed of as the AO is disposed of as above.

#. There shall be no order as to cost.

Date : 5-8-1998 (M.S.Parikh,J.)
(KPP)